



Legal Update

May 2015

The Massachusetts Appeals Court finds that police who were investigating a domestic violence incident can lawfully enter an apartment without a warrant under the emergency aid exception and seize evidence of illegal weapons and drugs found in plain view from that apartment.

Commonwealth v James Gordon, Mass. Appeals Court No. 13-P-1626

Background: On May 9, 2012, Peabody Police received an anonymous 911 call from Paddy Kelly's bar. The caller reported that there was a domestic disturbance in apartment one located within the same building as the bar. Police arrived and went directly to the main entrance of the apartments. After knocking loudly on the first floor apartment, another tenant allowed police inside. The police learned from the tenant that she had not called 911 but that she had heard an argument between a male and female along with some "crashing sounds." Police knocked on apartment one again and received no response. At this point, police went inside the bar after dispatch confirmed that the 911 call originated from the bar. A female bartender told police that she was the 911 caller and she contacted police because a woman known as "Kay," came into the bar and asked her to call police. According to the bartender, "Kay's hair was soaking wet, she was carrying her dog and her "voice was frantic." She also told police that when she asked Kay whether she was all right, Kay responded "no" and she noted that her shirt looked as though it had been pulled or stretched. Kay "appeared very upset" and the bartender knew she stayed in apartment one on many occasions. The bartender knew a male lived in apartment. Kay left the

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bar and walked toward the entrance to the apartment building although “no one saw whether Kay returned to apartment one.”

The police returned to apartment one and attempted to gain access. The building owner arrived on scene and identified the defendant, James Gordon, (hereinafter referred to as “Gordon”) as the tenant living in apartment one. Police searched inside the apartment and observed “a frying machine and broken glass, hypodermic needles and a mushroom-growing operation.” Police left the apartment when no one was found and later police returned with detectives from the drug unit and two agents from the Bureau of Alcohol, Tobacco and Firearms. The police and agents applied for a search warrant which led to the seizure of firearms, ammunition and drugs.

Gordon was charged and filed a motion to suppress evidence seized as a result of the search warrant. The motion judge concluded that “warrantless entry by police was not justified because no emergency existed when the police entered the apartment. Additionally, the motion judge found that “there was no report of physical violence or demonstration that police had evidence that the Kay was in need of immediate assistance.” The judge’s findings emphasized that “the alleged victim was clearly over and any emergency had dissipated given the fact that the alleged victim was out of the apartment physically uninjured and safe.” The Commonwealth filed an appeal and the Appeals Court heard the case.

Conclusion: The Appeals Court reversed the findings of the motion judge and held that the police had an objectively reasonable basis to conclude that the person who asked for police assistance may be inside the apartment and in need of emergency aid.

1st Issue: Whether police were justified entering the apartment under the emergency aid exception?

The Appeals Court concluded that the motion judge’s conclusions about whether an emergency still existed were not supported by evidence based on the facts contained in the record and that the police were justified in entering the apartment under the emergency aid exception. Pursuant to the emergency aid exception, police can enter a home without a warrant if they have an objectively reasonable basis to believe that someone may be injured or in imminent danger or harm. In the present case, the police received a report that there was a domestic disturbance. When the police arrived on scene, and banged on the door of apartment one, they received no response. Police commenced an investigation and heard from a neighbor that he had heard “crashing sounds.” The 911 caller who was also the bartender in the adjoining bar described her interaction with Kay. According to the bartender, Kay was distraught and had “soaking wet hair” along with a “pulled t shirt.” Although the bartender relayed that she saw Kay leave the bar, she could not verify for police whether Kay had returned to the apartment. The

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motion judge determined that Kay was out of danger and unhurt because she was able to enter the bar and ask the bartender to contact police. The Appeals Court did not agree with the motion judge's findings and concluded that the failure to locate Kay further indicate that the emergency may not be over.

The Appeals Court wrote that the "police must often make balanced choices and often domestic situations require police to make particularly delicate and difficult judgments quickly." ***Fletcher v. Clinton***, 196 F.3d 41, 50 (1st Cir. 1999). When considering the facts in the present case along with the very strong public policy in this Commonwealth against domestic violence, the police were justified in making a warrantless entry in the apartment under the emergency aid exception." Additionally, since no one could confirm whether Kay had returned to the apartment or whether her boyfriend was nearby, it was reasonable for police to believe Kay still may be in danger.

The Appeals Court did caution that "the emergency aid exception is not a broad authorization for the police to make warrantless entries into homes to conduct wellness checks whenever the police have a concern that someone may need assistance. It is a narrow exception to the warrant requirement and only arises when there is an objective basis for the belief that an emergency exists and a person is in need of immediate assistance. *Evidence that an incident of domestic violence has occurred is not, standing alone, justification for the police to make a warrantless entry into a home to assist the victim.*" Since some domestic violence incidents can escalate into a volatile or dangerous situation, "a rapid police response may be the only way to prevent further injury to a victim, to see whether a threat against a victim has been carried out, or to ascertain whether some other grave misfortune has befallen a victim." Because there is a heightened concern with domestic violence cases, when police have reliable information that a particular individual has been the victim of domestic violence, has requested police assistance, has exhibited signs of distress, may be inside an apartment or home, and despite a prompt response to the request for assistance and an effort to knock and announce their presence, the police receive no response, the conditions exist for a warrantless entry under the emergency aid exception."

Before reaching its conclusion, the Appeals Court reviewed the ***Lindsey*** case, where the police properly relied on the emergency aid exception to conduct a warrantless entry into a house after receiving a 911 call that an elderly woman was trembling and asking for help. ***Commonwealth v. Lindsey***, 72 Mass. App. Ct. at 488-490. In ***Lindsey***, when police arrived, they could not locate the elderly woman, and determined that she had likely gone back into her house and that she might be in need of emergency medical assistance. ***Id.*** at 487. Because the front door was locked, fire fighters forced it open and when police gained entry, they seized a number of number of incriminating items found in plain view. ***Id.*** at 487. The ***Lindsey*** court upheld the police's actions under the emergency aid exception. Here, the Appeals Court found that the

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police were justified in entering the apartment under the emergency aid exception due to the nature of the incident in conjunction with the information they had received when they arrived on scene.

2nd Issue: Were police justified in charging Gordon with gun and drug offenses after they observed illegal drugs and weapons in plain view when they entered the apartment without a warrant?

The Appeals Court held that since police had “reasonable grounds” to believe an emergency existed, they were justified in conducting a quick search of the apartment for anyone who might be injured or in need of help. When the police observed a number of suspicious items in plain view “including a frying machine and broken glass on the kitchen floor, hypodermic needles and evidence of a mushroom-growing operation,” the police applied for a search warrant. Gordon filed a motion to suppress the evidence the police seized from his apartment with a search warrant. Gordon argued that the police did not have legitimate grounds for entering his apartment without a warrant when they first arrived on scene. According to Gordon, any argument that had allegedly occurred was over by the time the police arrived and it was clear that Kay was uninjured and safely out of the apartment since she was able to walk into the bar. The motion judge agreed and allowed Gordon’s motion to suppress any evidence seized from his apartment.

The Appeals Court held that the motion judge’s findings were erroneous and not based on the facts presented in the case. By the time police arrived, it was unclear whether Kay was safe. Due to the uncertainty of Kay’s whereabouts, the police were justified in entering the apartment under the emergency aid exception and subsequently applying for a search warrant for the illegal items they observed in plain view while inside of Gordon’s apartment.

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